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October 21, 1997

By Hand Delivery

Mr. William Caton
Acting Secretary
Office of the Secretary
Federal Communications Commission
1919 M Street, NW
Room 222
Washington, DC 20554

BOSTON
HOUSTON
NEW YORK
SOUTHERN CALIFORNIA
SILICON VALLEY
TWIN CITIES
WASHINGTON, DC

Re: In Re Notice of Proposed Rulemaking
WT Docket No. 97-192
Our File 08145/002001

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Dear Mr. Caton:

On behalf of Fusion UV Systems, enclosed please find an original and four (4) copies of the company's Comments in the above-captioned proceeding. If you have any questions or concerns regarding these filings, please contact me directly.

Very truly yours,


Terry G. Mahn

/seg
Enclosures
cc: Fusion UV Systems

79639.W11

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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OCT 21 1997
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of
Notice of Proposed Rulemaking,

Procedures for Reviewing Requests for
Relief From State and Local Regulations
Pursuant to Section 332(c)(7)(B)(v) of the
Communications Act of 1934

WT Docket No. 97-192

COMMENTS OF FUSION UV SYSTEMS

Fusion UV Systems (Fusion UV), by its counsel, hereby submits these comments in the above-captioned Notice of Proposed Rulemaking (NPRM). Fusion UV is a manufacturer of RF-emitting devices that are pervasively regulated by the Commission under the Part 18 (ISM) Rules. Very recently, however, Fusion UV has begun to witness an emerging pattern of state regulatory activity which impedes competition of its products and threatens to upset the Commission's regulatory scheme.

More specifically, various state and local regulatory authorities are now requiring, or are in the process of evaluating whether to require, environmental assessments of RF-emitting equipment which the Commission has categorically exempted under federal law (see 47 C.F.R. § 1.1307). These regulations impose a variety of additional and sometimes conflicting

requirements which hinder Fusion UV's ability to compete in markets across the country.

The most dramatic example is in the State of New Jersey, where annual registration, inspection and renewal fees are imposed -- all in the name of RF radiation safety -- on every user of Fusion UV equipment. Fusion UV's concern is that other states are also considering the imposition of similarly burdensome regulatory schemes.¹

Accordingly, Fusion UV urges the Commission to preempt state and local regulations that force users to conduct environmental assessments of RF equipment which have been categorically excluded from comparable federal assessments. Such preemption should be asserted in this rulemaking or in conjunction with a similar proceeding in which such matters can be addressed (see NPRM ¶ 88).

DISCUSSION

Fusion UV manufactures microwave powered, ultraviolet industrial light sources that are used to process most of the world's fiber optics and CD ROM discs. A large fraction of the global supply of automotive optical products, both glass and plastic are, at some point, exposed to Fusion UV lamps to achieve various properties that are unattainable by any other method. Other commercial and industrial applications are as eclectic as the human mind can imagine: motor armature balancing, sterilization, labeling and packaging, pipe coating, no-wax flooring and furniture manufacturing to name a few.

¹ Other states identified by Fusion UV with statutes "on the books" are Connecticut

For more than a decade, Fusion UV has been the world leader in the research and development of microwave-excited ultraviolet light sources and their applications. Fusion UV's patented microwave technology provides a light source which, when compared to alternative technologies, has better spectral maintenance and gravitationally independent operations, faster start-up and unique spectral properties. These technological advantages have allowed Fusion UV to forge strong relationships with companies such as Ford Motor Co., General Motors, Corning, IBM, Sony, Sumitomo and General Electric.

Fusion UV lamps are energized by industrial grade magnetrons that operate in the internationally recognized 2450 MHz ISM band. Fusion UV already complies with the safety and EMC regulations in over 100 countries. Compliance with existing international regulations places a heavy burden on the company with over 2,000 man-hours presently required to execute the required regulatory work for each new product offering. What Fusion UV and its users do not need is an additional 50 regulatory bodies to satisfy and pay tribute.

For reasons that are unclear, the State of New Jersey enacted State Regulation 7:28-48 to establish an initial and annual registration requirement for all "radio frequency and microwave heaters, sealers and industrial ovens." The New Jersey regulations directly impact Fusion UV's ability to compete with other photonic sources by placing a financial burden upon its customers and by implying that its equipment is somehow different, and potentially less safe, than other non-RF industrial processes. With New Jersey taking the lead, Fusion UV faces

the prospect of someday finding itself buried under 50 different sets of regulatory requirements and its customers besieged by revenue-hungry state treasuries.

Although the instant rulemaking focuses on Commission relief from state regulation of "personal wireless services", the concerns raised by Fusion UV derive from the same nucleus of operative fact: namely, state regulatory programs that interfere or conflict with the Commission's regulation of RF equipment. In the case of ISM products like the Fusion UV lamps, the Commission's RF exposure limits were developed following extensive input from various federal health and safety agencies -- including the Environmental Protection Agency, Food and Drug Administration, Occupational, Safety, and Health Administration and National Institute of Occupational Safety and Health -- as well as from comments by over 150 interested parties and were derived from standards developed by the American National Standards Institute/Institute of Electrical and Electronics Engineers and the National Council on Radiation Protection and Measurements.

Clearly, there can be little, if any, scientific knowledge left in this arena upon which state and local authorities could base their regulations. To the contrary, the regulatory scheme for RF-emitting devices like Fusion UV's is so clearly pervasive at the federal level as to create an almost irrebuttable presumption that there is no room left for states to act.

The Supreme Court has held that where a scheme of federal regulation is so pervasive as to make reasonable the inference that Congress left no room for states to supplement it, state

regulations attempting to do otherwise are superseded by federal law. *Rice v. Santa Fe Elevator Corporation*, 331 U.S. 218, 230 (1947). Inarguably, the situation here is one in which Congress has implicitly commanded federal preemption. By adopting detailed RF exposure standards when general guidelines could easily have sufficed, the Commission has left no room for states or localities to act; and by providing a categorical exclusion from any environmental assessment for ISM devices, the Commission has determined that such equipment should be free from state or local RF regulatory controls.


CONCLUSION

Based on the foregoing, Fusion UV urges the Commission to determine, in this rulemaking or in one which follows immediately herefrom, that state and local regulatory programs involving RF radiation safety are preempted under federal law.

Respectfully Submitted,

Fusion UV Systems

by


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Date: October 21, 1997

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